



CENTER FOR GENDER & REFUGEE STUDIES

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February 3, 2005

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“Real ID” Bill Harmful to Trafficking Victims and other Women Refugees

The “Real ID” bill introduced by Rep. James Sensenbrenner in the House of Representatives contains provisions that will be harmful to trafficking victims and other women refugees. The bill is being marketed as an anti-terror measure, but most of its asylum provisions pertain to all refugees, and among them is one that is likely to directly and negatively impact women fleeing sex trafficking, honor killing, rape, domestic violence, forcible marriage and other persecution related to their status as women.

Under U.S. law, a refugee is a person who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Asylum seekers must demonstrate a “nexus” or link between the harm they fear (such as violence or imprisonment) and one or more of the five statutory grounds (such as religious belief). In other words, they must show that the persecutor – whether it is a government, or a persecutor the government cannot or will not control – is motivated to persecute because of their religion, or political opinion, etc.

The issue of determining the motivations of governments or individuals is a complex one, and persecutors often have a number of motives when they act against an individual. Proof of motive is made more difficult by the fact that persecutors are not likely to admit that they are targeting an individual for religion or race, but instead explain their actions as having a legitimate governmental motivation. Citizens of China fleeing forcible abortion and sterilization were for many years denied refugee protection on this basis.

Because of the difficulties in proving the motivation of the persecutor, the law of asylum has appropriately developed to recognize as refugees those individuals who can demonstrate that they fled persecution motivated *at least in part* by one of the five asylum grounds. The “Real ID” bill would impact this longstanding interpretation of the law to require that the link to the asylum ground be a “central” reason for the persecution.

There has been no attempt to explain the link between this specific restrictive language and the stated purpose of the “Real ID” act, which is to disrupt the free movement of terrorists.

The centrality requirement would raise the burden to all refugees seeking protection, but it will be especially prejudicial to women. The persecution of women often takes place at the hands of private individuals, including family members, who have multiple motivations that are difficult to distinguish, and often takes the form of violence that is justified by reference to cultural norms. The finding that a form of persecution is primarily motivated by personal or cultural reasons, rather than for one of the five grounds, would result in a failure of protection.

The well-known claim of Fauziya Kassindja, a young woman from Togo who fled female genital cutting (FGC), was initially denied for exactly this reason: the FGC was said to be an expression of culture, rather than persecution inflicted for one of the five grounds. Fortunately, this reasoning was reversed, and the Board of Immigration Appeals ruled correctly in her favor, finding that she was a member of particular social group, defined in part by her status as a woman.

Granting protection to victims of trafficking is a significant concern for Congress and the administration.¹ The UN has called trafficking in women and children "one of the most egregious violations of human rights which the United Nations now confronts."² Yet the "Real ID" bill would negatively impact asylum claims from women who are kidnapped and trafficked for sexual exploitation.

At CGRS, we have worked with dozens of attorneys across the country who represent women fleeing the international sex trade and seeking protection in the U.S. These women are targeted for the sex trade because they are women, and – as in the *Kassindja* case – they should be recognized as refugees, targeted for their membership in a social group defined by their status as women. But traffickers often have mixed motives, including financial gain. Numerous immigration judges have ruled that there was no "nexus" between the motivation of a particular human trafficker and any of the five statutory grounds for asylum, because the persecutors were driven by personal motivations such as greed. The "Real ID" bill – with its requirement of centrality – would only add to the barriers to cases such as these.

This approach runs counter to the protection extended to such women by countries such as our close allies Canada and the United Kingdom. For example, a case granted in the U.K. involved a Ukrainian woman who had been raped, sexually assaulted and forced into prostitution in Hungary. She was found to be a member of a particular social group, "women trafficked from the Ukraine to other countries for sexual exploitation and detained under threat of violence."

¹ Congress has created a new "T" visa, offering legal residence to individuals trafficked into the United States. But the T visa does not apply to a woman or child trafficked from Albania or Nigeria into Italy, for example, who somehow escapes to the U.S.

² Kofi Annan, quoted in Jenna Shearer Demir, "The Trafficking in Women for Sexual Exploitation," UNHCR Working Paper No. 80 (March 2003), at 3.

In a decision by the highest court of the United Kingdom, one of the judges evoked the persecution of Jews during World War II to illustrate the complexities of motivation and the need for a broader perspective. To paraphrase his example:

A Jewish shopkeeper is attacked by a gang organized by an Aryan competitor who smash his shop, beat him up and threaten to do it again if he remains in business. The competitor is motivated by business rivalry and a desire to settle personal scores, but he knows that the authorities would allow him to act with impunity. One explanation is that he was attacked because a competitor wanted to drive him out of business. But another explanation, equally correct, is that he was attacked by a competitor who knew that he would receive no protection because he was a Jew.

Those who care about protecting bona fide refugees should not let the centrality requirement become law and preclude the protection of bona fide refugees who – as in the example above – suffer at the hands of persecutors who may be motivated as much by greed, as by one of the five statutory grounds for asylum.